

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EL MONTE UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2010090994

ORDER DENYING DISTRICT'S
MOTION TO LIMIT ISSUES BASED
UPON STATUTE OF LIMITATIONS

On September 24, 2010, Parents on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a due process hearing request naming El Monte Union High School District (District) as the respondent. On October 4, 2010, attorney Adam Newman, Esq., filed on behalf of District a response to that request and a motion to limit issues to the two year statute of limitations. OAH has received no response from Student to District's motion to limit issues. For the reasons discussed below, District's motion to limit issues is denied.

APPLICABLE LAW

The statute of limitations for IDEA claims is two years unless the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency withheld information from the parent that was required to be provided to the parent. (Ed. Code, § 56505, subd. (1); see also 20 U.S.C. § 1415(f)(3)(C) & (D).)

DISCUSSION

District generally contends that Student asserts claims against the District in issues one and two of his complaint without providing a specific time limitation. District further contends that all claims before September 24, 2008, are time-barred by the two-year statute of limitations.

Student's issue one generally alleges that District failed to place student in the least restrictive environment, referring back to Student's initial placement in a special day class in 2006. Student also alleges that at his May 5, 2009 and May 5, 2010 IEPs District failed to transition Student to a lesser restrictive environment. Similarly, Student's issue two alleges that District failed to conduct a Functional Analysis Assessment to determine appropriate

placement, without reference to a time frame. However, Student incorporates into issue two his allegations relating to District's failure at his May 2009 and May 2010 IEPs to reconsider placement in a lesser restrictive environment. Student's issue three alleges that District failed to conduct an appropriate triennial assessment in April 2009.

The District fails to point to any authority that would require OAH to hear and determine the equivalent of a motion for summary adjudication on the statute of limitations without giving Student the opportunity to develop a factual record regarding the exceptions. Student's various allegations as discussed above are sufficient to require an evidentiary hearing as to whether an exception to the statute of limitations pertains. District may raise the statute of limitations defense at a time when the factual record is developed and not as a prehearing motion.

Accordingly, the District's statute of limitations arguments are rejected at this time, although they may be raised as a defense at hearing.

ORDER

1. District's motion to dismiss is denied.
2. All previously set dates in this matter stand as calendared.

Dated: October 20, 2010

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings